

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:04CR262
)	
v.)	
)	
BRANDY K. BRENTON,)	MEMORANDUM AND ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's amended 60(b) motion (Filing No. 156). This motion supersedes defendant's original Rule 60 motion to set aside this Court's judgment of February 5, 2008 (Filing No. 153), pursuant to Rule 60, and accordingly that motion will be denied as moot.

The underlying issue before the Court is whether or not defendant's motion pursuant to 28 U.S.C. § 2255 (Filing No. 140) should be deemed timely filed. The time for filing such motion expired on October 2, 2007, one year after the date that the Supreme Court of the United States entered an order denying defendant's petition for writ of certiorari.

The record appears to support the finding that on September 26, 2007, a Thomas Mitchell, acting under power of attorney for the defendant, submitted to the Court for filing her § 2255 motion, at which time he also presented a copy of the power of attorney executed by Ms. Brenton. The § 2255 motion was unsigned. This was noted and the documents were delivered to

Judge Smith Camp who, on October 3, 2007, entered an order directing the clerk to return the documents to the defendant/petitioner.

On October 19, 2007, the § 2255 motion was refiled, date stamped, and it reflected it had been signed "Brandy K. Brenton by Thomas P. Mitchell (power of attorney)." Judge Smith Camp in part rejected the § 2255 motion as untimely filed because there had been no showing that the petitioner was not competent or able to sign the documents herself. The Court records reflect there were documents (Filing Nos. 145, 146 and 147) filed on December 21, 2007, that were signed personally by petitioner on September 20, 2007. In addition, she personally signed the original Rule 60 motion (Filing No. 154) and the amended motion (Filing No. 156).

However, there is attached to her original motion filed pursuant to Rule 60 (Filing No. 154) as Exhibit "B" a copy of the power of attorney which was originally executed on July 27, 2006. Inasmuch as petitioner attempted to have her § 2255 motion filed on September 26, 2007, and the deficiency in this motion was subsequently cured by the filing on October 19, 2007 (Filing No. 140), the Court concludes that the motion has been timely filed. Fed.R.Civ.P. 11(a). *De Aza-Paez v. United States*, 343 F.3d 552 (1st Cir. 2003); *United States ex rel Guirsch v. Battaglia*, 2007 WL 4557819 (N.D.Ill.) In this respect, the Court has been

advised by the office of the clerk of this court that on September 26, 2007, a § 2255 motion was date stamped by that office.

However, the Court notes that the petitioner has failed to serve copy of the motion and supporting brief on the office of the United States Attorney as required by the Rules of this Court. Accordingly,

IT IS ORDERED:

1) On or before August 11, 2008, defendant shall serve a copy of her motion and brief on the office of the United States Attorney for the District of Nebraska.

2) The United States Attorney shall have until September 22, 2008, to respond to said motion.

DATED this 21st day of July, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court